

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1474 of 1981

cross with

FIRST APPEAL NO. 781 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
SPECIAL LAND ACQ. OFFICER

Versus

VIMLABEN RAVJIBHAI PATEL

-----  
Appearance:

Mr K C Shah, AGP for Petitioner  
MR KM PATEL for Respondent No. 1

-----  
CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/06/1999

ORAL JUDGEMENT

First Appeal No.1474 of 1981 is filed by the Special Land Acquisition Officer, Mahi Kadana Command Area, Nadiad under section 54 of the Land Acquisition Act (for short, 'the Act'), read with section 96 of the Code of Civil Procedure, challenging the judgment and award

dated March 31, 1991 passed by the learned Assistant Judge, Nadiad in Compensation Case No.27/78.

2. First Appeal No.781/82 is filed by the original claimant for enhancing of compensation against the judgment and award dated 31.3.1981 passed by the learned Assistant Judge, Nadiad in Compensation Case No.27/78.

3. As common questions of facts and law are involved in both the appeals which are filed challenging the judgment and award dated March 31, 1978 in Compensation Case No.27/78, they are disposed of by this common judgment.

4. The Executive Engineer (R & B), Kheda forwarded a proposal for the acquisition of the land bearing Survey No.783/2 admeasuring 18 Are, 66 sq.metres of village Vasad, Tal.Anand, Dist. Kheda belonging to the claimant for construction of Ambali Bhetasi Vasad Road. Pursuant to the said proposal, Notification under section 4(1) of the Act was published on November 11, 1976 and Notification under section 6 of the Act was published on October 13, 1977. The Land Acquisition Officer issued notices to the claimants under section 9 of the Act inviting their objections. The Land Acquisition Officer, by his award dated March 31, 1978, offered compensation of the acquired land @ Rs.250/- per Are. The claimant was of the opinion that the compensation awarded by the Land Acquisition Officer was inadequate, and therefore, he filed application under section 18 of the Act claiming compensation of the acquired land @ Rs.1200/- per Are. The said application was forwarded to the District Court, Kheda, which came to be numbered as Compensation Case No.27/78.

5. Before the Reference Court, the claimant, to substantiate his claim offer of Rs.1200/- per Are, examined (1) Ravjibhai Manoharbhai, at Exh.26, (2) Manubhai P Patel, at Exh.30, (3) Sumanbhai Ambalal, at Exh.36 and (4) Jayantibhai S Patel, at Exh.42. The claimant produced documentary evidence which consists of Power of Attorney - Exh.27, previous award of Land Acquisition Officer relating to land bearing Survey No.539/2 at Exh.31, Panchanama of plant and trees at Exh.32 and copy of sale deed Exh.41. The Reference Court, after appreciating oral and documentary evidence retained the market value of the acquired land at Rs.600/- per Are. The Reference Court further awarded Rs.7968/- for compensation of 71 trees which were standing on the acquired land on the date of the acquisition. The Reference Court also awarded Rs.653/as

severance and fragmentation charges to the claimant along with solatium at 15% and interest at 6% per annum.

6. Learned Asstt. Government Pleader who appears for the appellant in First Appeal No.1474/81 and the learned Advocate appears for the appellant who is claimant in First Appeal No.781/82 have taken me through the entire evidence produced before the Reference Court.

7. It is submitted by the learned AGP Mr K C Shah that the compensation determined by the Reference Court is excessive and the Reference Court ought not to have awarded compensation for the trees standing on the acquired land. It is further submitted by the learned AGP that the Land Acquisition Officer had awarded just and adequate compensation for the claimant and the Reference Court has erred in enhancing the compensation.

8. Learned Advocate for the original claimant submitted that the oral as well as documentary evidence which was produced before the Reference Court reflected that the market value of the similarly situated adjoining lands of village Vasad had fetched market value at the rate of Rs.1200/- to Rs.2,000/-, and therefore, the Reference Court ought to have awarded compensation at the rate of Rs.1200/- per Are to the claimant. It is submitted that the acquired lands were very fertile in nature and similar lands having the same fertility were sold at the rate of Rs.2000/- per Are at the time when the notification under section 4(1) of the Act was published. It is, therefore, urged by the learned Advocate for the claimant that the claimant should be awarded compensation at the rate of Rs.2000/- per Are and the appeal filed by the claimant be allowed.

9. It is settled principle that the previous award, by which the market value of the adjoining land has been determined, provides a good guide for determining the compensation for the similarly situated lands and notification of which was published in proximity of time compared to the notification of the previous award.

10. It may be stated that the sale deed on which reliance was sought to be placed by the claimant related to non-agricultural land which were not comparable to the present acquired lands. When the sale deed which were relied on by the claimant were not comparable with the acquired land, the Reference Court was not left with no

other alternative but to rely on the previous award Exh.31 passed by the Land Acquisition Officer which was related to the land bearing Survey No.539/2 of village Vasad. The lands which were the subject matter of award Exh.31 came to be acquired by the notification under section 4(1) of the Act on 5.8.73 in the year 1973. The said award was brought on the record of the case by witness Ravjibhai Manoharbhai examined at Exh.26. The witness Ravjibhai deposed that the lands of Survey No.539/2 which was the subject matter of award Exh.31 were of inferior quality and were situated at a distance of two to two and half kilo meters from the acquired land. The market price of the land (Jarayat land) bearing Survey No.539/2 was determined at Rs.600/- per Are by award Exh.31 made by the Special Land Acquisition Officer, Kheda. The said lands of Survey No.539/2 were acquired by notification under section 4(1) of Act in the year 1973, whereas, the lands under acquisition in the present appeal were acquired by notification issued under section 4(1) of the Act on November 11, 1976, and therefore, there was a gap of three years between the issuance of the notifications under section 4(1) of the Act. Normally, the Courts takes judicial notice of the rise in price at 10% per annum, if there is gap between the two notifications. Therefore, in my opinion, this Court can take into consideration, the rise in price for the three years at 10% per annum every year. In my opinion, if the rise in price of 10% per annum is adopted, the claimant would be entitled to increase of price for the three years which would come to Rs.180/-. The Reference Court had not taken into consideration the gap of three years between the two notifications. Therefore, in my opinion, the market price of the acquired land can be determined @ Rs.780/- per Are. (Rs. 600 + 180 rise in price of three years = Rs.780/-) In view of the above stated facts and situation, the market price determined by the Reference Court at Rs.600/- per Are requires to be enhanced at Rs.780/- per Are. Therefore, the appeal filed by the State of Gujarat deserves to be dismissed, whereas First Appeal No.781/82 filed by the claimant requires to be allowed partly with modification that the claimant would be entitled to compensation of the acquired land at Rs.780/- per Are instead of Rs.600/- per Are. The compensation awarded for the trees standing on the acquired land is quite just and reasonable, and therefore, it is confirmed. The award of severance and fragmentation charges also deserves no interference, hence the same is also confirmed.

11. As a result of the foregoing discussion, First Appeal No.1474/81 filed by the Special Land Acquisition Officer, Nadiad is hereby dismissed. First Appeal No.781/82 filed by the claimant is partly allowed and the award of the Reference Court is modified to the extent that the claimant would be entitled to compensation of the acquired land at Rs.780/- per Are instead of Rs.600/per Are. Rest of the award of the Reference Court is hereby confirmed. The claimant would be entitled to solatium at the rate of 15% per annum and interest at 6% per annum on the additional amounts of compensation awarded by this Court, till its realisation. There shall be no order as to costs in both the appeals. Office is directed to draw award in terms of this judgment.

....  
msp.